REMARKS/ARGUMENT

Responsive to the Office Action final rejection of January 8, 2007, reconsideration of the application is requested based on the following remarks.

Summary of Rejections

Claims 1, 3-7, 9-12, and 14-15 were pending at the time of the final Office Action.

Claims 1, 3, and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rasmussen, U.S. Patent 6,640,334, in view of Huh, U.S. Patent 6,584,559, and in further view of Kavanagh, U.S. Pat. 6,854,054.

Claims 4, 6, 9, and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rasmussen, Huh and Kavanagh, in further view of Morgan et al, U.S. Patent Publication No. 2002/0144187.

Claims 5 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rasmussen, Huh, Kavanagh and Morgan, in further view of an admitted prior art.

Claim 12 was rejected under 35 U.S.C. §103(a) as being unpatentable over Rasmussen, in view of Kavanagh.

Claims 14 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rasmussen and Kavanagh, in view of Huh.

Summary of Response

Claims 1, 3-7, and 9-12 are amended.

Claims 2, 8, and 13-15 are cancelled.

New claims 16-19 are added.

Remarks and Arguments are provided below.

Summary of Claims Pending

Claims 1, 3-7, 9-12 and 16-19 are currently pending following this response.

Response

Applicants express appreciation for the February 20, 2007 telephonic interview. During the interview, Applicants respectfully traversed the Office Action's mapping of Applicants' claims to the Rasmussen (U.S. Patent 6,640,334) prior art. The Office Action at page 2, paragraph 3 states that "Rasmussen's active page flag was equated to the claimed trial run message." However, Applicants discussed and pointed out that Applicants' claimed trial run message and the active page flag that designates a current binary file are actually two distinct elements that provide two separate operations.

The claimed trial run message takes the form of an instruction, written to and existing in volatile memory, that identifies the location of a binary file for a trial run. **Simultaneously** existing therewith in volatile memory is the active page flag that indicates the location of the current binary active file. Applicants' specification at paragraph [0050] highlights the distinction. Therein, it states:

> At step 306 a trial message is written into a designated or reserved location in SDRAM 53. This message identifies either Flash A or Flash B as the location of a binary file which is to be tested with a trial run. In the preferred embodiment, this message may be of the form RUNIMAGE[A or B]. In the present example where the currently locked image is in Flash A, the message may be RUNIMAGE[B]. **At this point, a flag still exists in flash memory indicating that Flash A contains the current active binary file**, which is at this point operating the system. (emphasis added).

Furthermore, Applicants' trial run message and active page flag convey different information. The trial run message discloses the binary file location and designates the binary file that will be the subject of the trial run. In Applicants' specification excerpt,

supra, for example, the trial run message recites RUNIMAGE[B], which means to run the binary file stored in flash memory location B. Meanwhile, in the same example, the binary file flag points to flash memory location A as containing the current binary file that is operating the system.

Additionally, Rasmussen at column 6, lines 61-62 discloses that "the Active Page Flag is a conditional value" which allows firmware logic to enable the active page. The active page flag cannot simultaneously function as a trial run message instruction and a conditional value. Therefore, the active page flag and the trial run message are not the same element. Applicants have amended the claims to more clearly point out the key distinction between Applicants' trial run message and active page flag.

Applicants, now, also respectfully traverse the Office Action's assertion that the Huh (U.S. Patent 6,584,559) prior art discloses the Applicants' limitation of "designating the new binary file as the currently active binary file." The Office Action, at page 3, paragraph 4 states in pertinent part: "The Office interprets Huh's validation flag as designating the file as currently active." However, Applicants contend that verifying proper operation via a validation flag and designating a file as currently active are distinct functions performed by more than one element.

Applicants' specification clearly points out these elements. In the specification, a flag, designating a binary file as currently active, exists in non-volatile memory. That flag is separate from any validation or verification indicator that verifies proper operation of the binary file. In addition to paragraph [0050] cited, supra, that discloses the flag in flash memory that points out the currently active binary file, Applicants' specification at paragraph [0056] also supports Applicants' assertion of a distinct validation or

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verification process that is separate from a currently active binary flag. The specification at paragraph [0056] states in pertinent part:

> If the verification process . . . indicates that the new binary file is functional in the ISH. . .the new file is locked in flash 54 as the current active binary file, i.e. in this example FLASH B will be flagged as the currently active section.

Assuming, *arguendo*, that Huh's validation flag is Applicants' currently active binary flag highlights other inconsistencies with that presumption. For example, Huh's Figure 1 discloses a validation flag, reference sign 34, as being a separate element from the non-volatile memory, reference sign 26. Clearly, Huh's validation flag is not stored in a non-volatile memory. Applicants' currently active binary flag, however, *is* stored in a non-volatile flash memory. Therefore, in order to even suggest that Huh's validation flag equates or is similar to Applicants' currently active binary flag, Huh's validation flag must also at least be similarly stored in a non-volatile memory. That is not the case, here, where Huh's validation flag is separately generated and stored. Therefore, the Office Action's assertion that Huh discloses the Applicants' limitation of "designating the new binary file as the currently active binary file" cannot be valid.

Moreover, both Applicants' claim 1 and former claim 15 recited the claim element of "designating the new binary file as the currently active binary file." The Office Action rejected this claimed element in Applicants' claim 1 as unpatentable over the Rasmussen prior art. Yet, for the identically recited claim element in Applicants' former claim 15, the Office Action abandons the application of the Rasmussen prior art, in favor of stretching the Huh prior art, in a seemingly tortured claim mapping exercise, to read on this very same claim limitation. Based on the arguments presented, however,

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Applicants maintain that neither Rasmussen, Huh nor any other prior art of record in this application, disclose or fairly suggest the recited claim language.

Nevertheless, despite the Office Action obvious misconstructions, Applicants have made a sincere effort to place the claims in a condition for allowance and have amended the claims to more precisely distinguish Huh's validation flag from Applicants' currently active binary file flag. Further, Applicants have recited additional claim elements that further distinguish the claims from the cited and applied prior art of Rasmussen, Huh, Kavanagh (U.S. Patent 6,854,054) and Morgan (U.S. Patent Publication 20020144187). For example, the amended claim language now recites the use and subsequent deletion of a trial run parameter that configures the non-volatile memory. Support for this amendment may be found in Applicants' specification at paragraphs [0049] and [0058]. In addition, Applicants also have amended the claims to recite the unique feature of deleting the trial run message. Support for this amendment may be found in Applicants' specification at paragraph [0053].

Finally, Applicants contend that the prior art of Rasmussen, Huh, Kavanagh and Morgan, either alone or in combination, do not teach or fairly suggest Applicants' claims, as amended.

CONCLUSION

Applicants respectfully submit that the present application, as amended, is in condition for allowance. No new subject matter has been added. Accordingly, a notice of allowance is earnestly solicited. If the Examiner has any questions or comments or otherwise feels it would be helpful in expediting the application, he is encouraged to telephone the undersigned at (972) 731-2288.
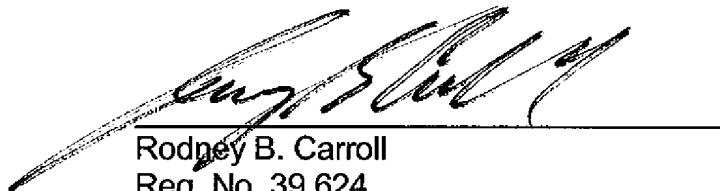
The Commissioner is hereby authorized to charge payment of any further fees associated with any of the foregoing papers submitted herewith, or to credit any overpayment thereof, to Deposit Account No. 21-0765, Sprint.

Respectfully submitted,

CONLEY ROSE, P.C.

Date: _3-7-07_

5700 Granite Parkway, Suite 330
Plano, Texas 75024
Telephone: (972) 731-2288
Facsimile: (972) 731-2289

Rodney B. Carroll
Reg. No. 39,624

ATTORNEY FOR APPLICANTS

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